



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 13 2012

**URGENT LEGAL MATTER**  
**PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Thomas Bentley  
Acting City Attorney  
Legal Department  
City of Birmingham  
710 20th Street North  
Birmingham, Alabama 35203

Dear Mr. Bentley:

The United States Environmental Protection Agency (EPA) is investigating the release or threat of release of hazardous substances, pollutants, or contaminants at the Five Mile Creek Superfund Site (Site), located generally along Five Mile Creek between Alabama Highway 79 and County Road 77 in Birmingham, Jefferson County, Alabama. Pursuant to the EPA's mandate to protect human health and the environment, the EPA requests that the City of Birmingham (City) grant access to its property identified as Parcel ID Nos. 012200022000001001, 012200021000001001, 011400363000001002 and 012200012000002000 (Property) in order to conduct sampling activities at the Site. The EPA's activities at the Property will include, but not be limited to, sampling surface water, sediment, and soil in and along Five Mile Creek and its tributaries, including along the overbank and adjacent floodplain of Five Mile Creek, and transporting equipment onto and about the Property as necessary to accomplish such sampling. The purpose of the sampling is to delineate the extent of contamination, investigate possible sources of contamination, and collect samples downstream of areas previously sampled in April 2012.

The EPA requests that the City grant access to the Property beginning on January 1, 2013. The grant of access will be effective for the duration of sampling and continue until April 1, 2013. Actual start and completion dates cannot be predicted with certainty and are subject to schedule conflicts and unforeseen circumstances. Please indicate consent to grant access to the EPA to conduct the above described activities at the Site by signing and dating the enclosed authorization. Please return the signed agreement to me at the below address no later than ten days following receipt.

Pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9604(e), the EPA has the express authority to acquire access to property affected by hazardous substances and to conduct the planned removal action. If a request for access is denied, an administrative order directing compliance with the request may be issued, civil action to compel compliance may be initiated, or access may be sought by any other lawful means. Under certain circumstances, a court may impose a civil penalty in an amount not to exceed \$37,500 per day for failure to grant access or comply with an administrative order directing that access be granted.

Internet Address (URL) • <http://www.epa.gov>

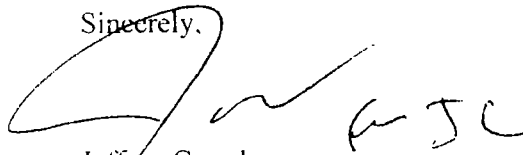
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If you should have any legal questions, please contact Stephen P. Smith, Assistant Regional Counsel, at (404) 562-9554. Upon request, the EPA will allow split samples of any samples taken during the planned sampling of Five Mile Creek on City-property provided the City utilizes its own materials for obtaining such split samples. The EPA may also provide the City a copy of laboratory results of any EPA samples taken during this sampling following the EPA's receipt and validation of such results. For questions regarding split sampling, laboratory results or any other technical questions regarding response actions at the Site, please contact me at (404) 562-8278. Your assistance and cooperation are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffery Crowley', with a large, stylized initial 'J' and 'C'.

Jeffery Crowley  
On Scene-Coordinator

Enclosure

## ACCESS AUTHORIZATION

1. I, \_\_\_\_\_, am the \_\_\_\_\_, and as such have the authority to sign this authorization.

2. I grant authorization to the United States Environmental Protection Agency (EPA), its officers, employees, contractors, and other authorized representatives to enter City-owned property identified as Parcel ID Nos. 012200022000001001, 012200021000001001, 011400363000001002 and 012200012000002000 (Property). This authorization allows the EPA, its officers, employees, contractors, and other authorized representatives to have access to the Property in order to conduct additional sampling of Five Mile Creek. The EPA's activities at the Property will include, but not be limited to, sampling surface water, sediment, and soil in and along Five Mile Creek and its tributaries, including along the overbank and adjacent floodplain of Five Mile Creek, and transporting equipment onto and about the Property as necessary to accomplish such sampling. The purpose of the sampling is to delineate the extent of contamination, investigate possible sources of contamination, and collect samples downstream of areas previously sampled in April 2012.

3. The consent for access and use granted herein will commence on January 1, 2013, and will continue until April 1, 2013.

4. I have been notified that these actions by the EPA are undertaken pursuant to its response authority under Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), 42 U.S.C. Section 9604(a).

5. I have been notified that parties found responsible pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), may be liable for all costs the EPA incurs in connection with the response which are not inconsistent with the National Contingency Plan (NCP), at 40 CFR Part 300. However, my signature on this Access Authorization does not constitute an admission of liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

6. Please return this signed and dated Access Authorization to:

Jeffery Crowley, On-Scene Coordinator  
Emergency Response and Removal Branch  
Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_